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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,051	12/01/2003	Clarence Thibeau	03214	2968

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EXAMINER	
LAUX, JESSICA L	
ART UNIT	**PAPER NUMBER**
3635	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/725,051	THIBEAU, CLARENCE	
	Examiner	Art Unit	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) *5,6,12-14,16 and 19-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-11,15,17,18 and 23* is/are rejected.

7)☒ Claim(s) *17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment is made of applicant's response filed 08/29/2006. Accordingly claims 5-6, 12-14, 16, 19-22 have been withdrawn, claims 1,2,4,7,9, have been amended and claim 23 has been added. An examination of claims 1-4, 7-11, 15, 17-18, 23 is below.

Response to Arguments

In response to applicant's argument that the prior art of Allen does not teach or suggest that it can be applied as an air gap spacer, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The ground support system is inherently capable of being used as an air gap spacer for providing spacing, as it has the same structure as applicant claimed invention.

In response to applicant's argument that the reference of Allen fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the protrusions are not open-ended) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-11, 15 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (5256007).

In regards to claims 1 and 17: Allen discloses a spacer capable of providing spacing between an outer wall surface of a building under construction and an exterior cladding material, wherein the exterior cladding material is one of: siding, shingles, brick and clapboard, the spacer comprising: a planar surface (16 and Abstract lines 9-10) having a plurality of cutouts (22); and a plurality of mutually spaced protrusions (20 and Abstract lines 6-8) of substantially uniform height depending from one side (18) of said planar surface, the apices of at least some of said protrusions forming a protrusion plane, the protrusion plane for abutment to the outer wall surface of the building; whereby, when the spacer is in place, liquid and air may pass through channels formed among the protrusions to facilitate air circulation and liquid drainage.

In regards to claim 2: The spacer according to claim 1 above, wherein said protrusions depend from said planar planar surface at least approximately perpendicularly (Figure 1).

In regards to claim 3: The spacer according to claim 1 above, wherein said protrusions are of like dimensions, terminating to form said protrusion plane (Figure 1 and Col. 4, lines 8-9).

In regards to claim 4: The spacer according to claim 1 above, wherein said protrusion plane is at least substantially parallel to said planar surface (Figure 1).

In regards to claim 7: The spacer according to claim 1 above, wherein the cutouts of the planar surface are of a repeating pattern over at least substantially the entire spacer (Figure 2).

In regards to claim 8: The spacer according to claim 1 above, wherein said protrusions are of a repeating pattern over at least substantially the entire surface of the spacer (Figure 2).

In regards to claim 9: The spacer according to claim 1 above, wherein the cutouts are selected from a shape of the group consisting of: diamond, circular, square, rectangular, oval and quadrilateral (Figures 1 and 2 where the apertures are circular).

In regards to claim 10: The spacer according to claim 1 above, wherein said protrusions are selected from a shape of the group consisting of: pyramidal, flat topped pyramidal, conical, flat topped conical, rectangular based pyramid, cuboid and rectangular block (Figures 1 and 2; Col. 4, line 9).

In regards to claim 11: The spacer according to claim 1 above, wherein the spacer is made by at least one of: injection moulding, pouring moulding, extrusion or stamping. It should be noted that claim 11 is considered a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). In this

case the spacer of Allen is made of plastic and injection moulding, pouring moulding are obvious methods of producing a plastic product.

In regards to claim 15: The air gap spacer according to claim 1 above, wherein the air gap spacer is adapted to be secured to the surface of the building being constructed by way of securing means selected from the group consisting of tacks, nails and screws (where the spacer has apertures at the distal end of the projections that are adapted to be secured to a building with tacks, nails, or screws).

In regards to claim 18: An air gap spacer according to claim 1, wherein the spacer is made of a material selected from the group consisting of plastic, metal, aluminum, and pressed wood particle product (Col. 3, line18, where plastic is a polymerized material).

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by L.E. Curtis (1537588).

Regarding claim 23: Curtis discloses an air gap spacer, capable of providing spacing between an outer wall surface of a building under construction and an exterior cladding material, the air gap spacer comprising: a lattice-shaped planar surface (figure 12) having a plurality of cutouts (10,13); and a plurality of mutually spaced protrusions (12,12a) of substantially uniform height depending from one side of said lattice-shaped planar surface (figure 13), the apices of at least some of said protrusions forming a protrusion plane (where the apices are all of the same height and therefore end in the same plane), the protrusion plane for abutment to the outer wall surface of the building;

whereby, when the spacer is in place, liquid and air may pass through channels formed among the protrusions to facilitate air circulation and liquid drainage.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL
09/27/2006

NAOKO SLACK
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